



**FILED**

12-28-06

03:28 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the  
Commission's Procurement Incentive Framework and to  
Examine the Integration of Greenhouse Gas Emissions  
Standards into Procurement Policies.

Rulemaking 06-04-009  
(Filed April 13, 2006)

**NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION  
OF THE UNION OF CONCERNED SCIENTISTS**

John Galloway  
UNION OF CONCERNED SCIENTISTS  
2397 Shattuck Avenue, Suite 203  
Berkeley, CA 94704  
Phone: (510) 843-1872  
Facsimile: (510) 843-3785  
E-Mail: [jgalloway@ucsusa.org](mailto:jgalloway@ucsusa.org)

Dated: December 28, 2006

## **I. INTRODUCTION**

In accordance with Section 1804(a) of the Public Utilities Code,<sup>1</sup> the Union of Concerned Scientists (“UCS”) hereby gives notice of intent to claim compensation (“NOI”) in this proceeding. Section 1804(a) requires customers who intend to claim compensation to file a notice of intent to claim compensation within 30 days of the Prehearing Conference (“PHC”), or by the first business day thereafter if the 30<sup>th</sup> day falls on a weekend or a holiday when the Commission offices are closed. The most recent PHC for this proceeding was held on November 28, 2006, 30 days from which is Thursday, December 28; therefore, this notice is timely filed. UCS requests a finding that it is eligible for compensation pursuant to Section 1804.

## **II. DISCUSSION**

### **A. UCS is a “Customer” as defined in Section 1802(b).**

Section 1802(b) describes customers eligible to claim compensation for participation as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...”

UCS falls within the third category. UCS is a non-profit, membership organization devoted to building a cleaner, healthier environment and a safer world through the use of rigorous scientific analysis, innovative thinking and committed citizen advocacy. As described in its bylaws, UCS conducts scientific and technical analysis and research in the public interest, disseminates the results of this research and analysis to the general public, and presents its views and assists

---

<sup>1</sup> All code references are to the Public Utilities Code unless otherwise specified.

members in presenting their views before administrative agencies and courts.<sup>2</sup> UCS seeks to accomplish its goals through five Programs: Clean Energy, Clean Vehicles, Global Environment, Global Security and Food and Environment. The Clean Energy Program includes extensive research and advocacy on renewable energy standards, the impact of energy production on human health and the environment, and nuclear safety. UCS has actively participated in numerous proceedings before this Commission with a focus on renewable energy matters, electricity procurement, and greenhouse gas policies, with particular emphasis on integration of renewable energy into utility long-term resource plans and procurement.

UCS has been ruled eligible for intervenor compensation in numerous proceedings before this Commission, including R.01-10-024, R.04-04-003, R.04-04-026, R.06-02-012, and R.06-05-027.<sup>3</sup> UCS was granted intervenor compensation in R.01-10-024 in Decisions 03-10-085 and 04-03-033, in R.04-04-026 in Decision 06-04-022, and in R.04-04-003 in Decision 05-06-025. Public Utilities Code Section 1804(b)(1) states, in part, that “[a] finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.” Decision 06-04-022 found UCS to meet the criteria for significant financial hardship. Because this proceeding commenced on the same day of that finding, the rebuttable presumption applies in this case.

UCS has over 70,000 individual members nationwide, with approximately 14,300 members in California. These members are residential electricity customers. The Commission has held:

---

<sup>2</sup> The Union of Concerned Scientists, Bylaws, Article II. The Bylaws were previously filed with the Docket Office and the assigned Administrative Law Judge in R.04-04-003. Parties may request a copy from the undersigned.

<sup>3</sup> UCS also has a pending NOI filing in R.06-02-013 (procurement) which has not yet been ruled upon.

With respect to environmental groups, we have concluded they were eligible in the past with the understanding that they represent customers whose environmental interests include the concern that, e.g., regulatory policies encourage the adoption of all cost-effective conservation measures and discourage unnecessary new generating resources that are expensive and environmentally damaging. They represent customers who have a concern for the environment which distinguishes their interests from the interests represented by Commission staff, for example.” (D.88-04-066, at 3.)

UCS respectfully requests a finding that it is a “customer” pursuant to Section 1802(b).

### **B. Statement of the Nature and Extent of UCS’s Planned Participation in the Proceeding**

Section 1802(a)(2)(A)(i) provides that a notice of intent to claim compensation must include: “[a] statement of the nature and extent of the customer’s planned participation in the proceeding as far as it is possible to set it out when the notice of intent is filed.” UCS intends to participate in all “Phase Two” issues as outlined in the Order Instituting Rulemaking (“OIR”) for this proceeding<sup>4</sup> and the Preliminary Scoping Memo included in the Joint ALJ Ruling dated November 1, 2006.<sup>5</sup> The Joint ALJ Ruling states this phase of the proceeding will “focus on implementation of a load-based GHG emissions cap and coordination of this Commission’s regulations with regulations that the California Air Resources Board (CARB) will adopt to implement AB 32, ‘The California Global Solutions Warming Act of 2006,’ signed into law on September 27, 2006” (p. 2) and sets forth two major issue areas in this phase:

- 1) threshold issues associated with considering the adoption and design of a greenhouse gas (“GHG”) performance standard, and
- 2) implementation issues associated with the load-based GHG emissions cap adopted in D.06-02-032 as part of the Commission’s procurement incentive framework.

---

<sup>4</sup> R.06-04-009, “Preliminary Scoping Memo” at pp. 11-13 (Phase Two referred to here as “Procurement Incentive Framework—Implementation Phase”).

<sup>5</sup> “Joint Administrative Law Judges’ Ruling and Notice of Prehearing Conference,” dated Nov. 1, 2006, at pp. 2-7 and Attachment A (Draft Scope of Issues for Phase 2).

The Joint ALJ Ruling then broadly categorizes the issues in this phase by five programmatic elements:

- 1) reporting requirements;
- 2) baseline development and allowance allocation;
- 3) design of cap structure and ratchet;
- 4) flexible compliance mechanisms;
- 5) modeling to support the evaluation of cost effectiveness.

The OIR categorizes issues in this phase generally as:

- implementation issues associated with the load-based greenhouse gas (“GHG”) emissions cap adopted in D.06-02-032, including but not limited to:
  - 1) quantifying the GHG emissions baseline for each load-serving entity;
  - 2) adjusting GHG emission reduction requirements over time, relative to the baseline;
  - 3) adopting and administering a process for allocating emission allowances;
  - 4) developing flexible compliance mechanisms with appropriate performance incentives and penalties.
- exploration of the concept of “allowance sale incentives”;
- establishment of emissions reporting requirements;
- identification of issues for which energy service providers, community choice aggregators, and the utilities should be subject to the same terms and conditions of GHG reduction requirements and associated caps, and those where differences may be appropriate;
- incorporation of GHG emissions associated with customer use of natural gas into a procurement incentive framework;

- incorporation of existing GHG emissions profiles and the future GHG implications of utility procurement plans in 2006 procurement plan filings, in coordination with R.06-02-013.

The Joint ALJ Ruling also notes that some GHG rules and regulations will be developed and implemented by CARB, and encourages parties “to think creatively when addressing integration issues” between the programs underway at both agencies.<sup>6</sup>

While UCS plans to participate in each of the issue areas identified, its scope of participation will be narrowed if and as appropriate in an effort to minimize duplication with other parties representing similar interests. UCS has already been and intends to continue consulting regularly with these other parties toward this end. At this early point in the proceeding, UCS anticipates that it will participate in workshops, discovery, and submit briefs and comments. If evidentiary hearings are held, UCS may also sponsor expert testimony and conduct cross-examination.<sup>7</sup>

### **C. Itemized Estimate of the Compensation that UCS Expects to Request**

Section 1804(a)(2)(A)(ii) provides that a notice of intent to claim compensation must include: “[a]n itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time.” UCS has made a good-faith effort to develop such an estimate, which is provided below.

Billing rates used in this NOI are based on those requested by UCS in its most recent request for an award of intervenor compensation filed in R.06-02-012.<sup>8</sup> Those rates, in part,

---

<sup>6</sup> Joint ALJ Ruling at p. 5

<sup>7</sup> If UCS deems it necessary to participate in evidentiary hearings, it may need to amend its NOI to cover the substantial costs of participation in those hearings. This NOI estimates moderate expenses for a technical consultant and expert witness.

<sup>8</sup> “Request for an Award of Compensation to the Union of Concerned Scientists for Substantial Contributions to Decision 06-10-019 and for Participation in Utility Procurement Review Groups,” filed December 11, 2006, in R.06-02-012.

were first requested by UCS in R.04-10-010, which is the proceeding in which 2005 intervenor compensation rates were to be set. In D.06-04-022 the Commission granted UCS's intervenor compensation request at rates that in some cases are lower than those requested in R.04-01-010 and UCS' intervenor compensation request. D.06-04-022 acted on UCS's request for intervenor compensation filed July 11, 2005, in R.04-04-026, which was necessarily filed prior to the decision (D.05-11-031) in R.04-10-010 in which the guidelines for setting 2005 rates were established, which meant that UCS could not know the actual 2005 intervenor rate guidelines. UCS therefore intends to make its intervenor compensation request(s) in this proceeding in light of the guidelines contained in D.05-11-031 and in a recent proposed decision in R.06-08-019 for setting 2006 and 2007 rates,<sup>9</sup> and respectfully requests that the sometimes lower rates awarded in D.06-04-022 not necessarily be taken as the point of reference for rates awarded in this proceeding. Because the Commission is in the process of establishing additional guidelines for setting 2006 and 2007 rates, the rates ultimately requested by UCS may be adjusted in accordance with those guidelines.

Without prejudice to our ability to request a higher amount if the nature and duration of the proceeding so warrants, UCS currently estimates a budget of \$123,065, comprised of the following components:

1. Staffing, hours and proposed billing rates:

UCS Staff:

- Alan Noguee, Program Director; 30 hours at \$232/hr = \$6,960.
- John Galloway, Senior Energy Analyst; 200 hours at \$160/hr = \$32,000.
- Cliff Chen; 150 hours at \$125/hr = \$18,750.

---

<sup>9</sup> A proposed decision in R.06-08-019 was issued December 12, 2006, and has not yet been approved by the Commission.

Consulting Staff:

- Clyde Murley, Policy Advocate/Analyst and Consultant to UCS; 80 hours at \$230/hr = \$ 18,400.
2. Expenses (non-staff time travel costs, postage, copies, etc.): \$1,500.
  3. Expert witness(es):
    - Technical consultant and expert witness, to be determined; 180 hours at \$200/hr = \$36,000 (expense will vary depending on scope of proceeding and/or whether additional evidentiary hearings are held).
  4. Travel and Compensation Request preparation time:

UCS Staff:

- Alan Noguee, Program Director; 5 hours at \$116/hr = \$580.
- John Galloway, Senior Energy Analyst; 40 hours at \$80/hr = \$3,200.
- Cliff Chen; 30 hours at \$62.50/hr = \$1,875.

Consulting Staff:

- Clyde Murley, Policy Advocate/Analyst; 20 hours at \$115/hr = \$2,300.

Expert witness(es):

- Technical consultant and expert witness, to be determined; 15 hours at \$100/hr = \$1,500.

The amount of any future claim to compensation is dependent upon the actual scope of the case and the final decision(s) in this proceeding.

**D. Participation in the Proceeding Would Pose a Significant Financial Hardship to UCS.**

Section 1804(a)(2)(B) provides that “[t]he notice of intent may also include a showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship.” “Significant financial hardship” means, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. The Commission has held that



organizations with individual members who have annual utility bills of less than \$50,000 possess economic interests that are small in comparison to the costs required to participate in the proceeding. (D.95-02-093, at 4). According to the Commission, an “individual member” means individual members, not the collective membership.

UCS meets this test for significant financial hardship. Although there is no survey of the electricity bills of its membership, it can be stated with confidence that the average annual residential utility bill does not exceed \$50,000. Because UCS represents individual ratepayers, the economic interests of its membership are small compared to cost of participation in this proceeding.

In addition, Section 1804(b)(1) states that intervenors are entitled to a rebuttable presumption of financial hardship if the proceeding was commenced within a year of a previous finding. UCS was awarded intervenor compensation in Decision 05-06-025 (June 16, 2005) in R.04-04-003, and Decision 06-04-022 in R.04-04-026 (April 13, 2006), thereby entitling UCS to a rebuttable presumption of financial hardship in this proceeding.

### **III. CONCLUSION**

UCS respectfully requests that the Commission rule that it is eligible for compensation in this proceeding. Specifically, UCS requests that the Commission issue a preliminary ruling in which it finds that: (1) UCS is a customer as defined in Section 1802(b); (2) UCS has made an adequate showing of financial hardship as defined in Section 1802(g); and (3) UCS has met the requirements of Section 1804(a) for eligibility for compensation.

Respectfully submitted,

/s/

---

John Galloway  
UNION OF CONCERNED SCIENTISTS  
2397 Shattuck Avenue, Suite 203  
Berkeley, CA 94704  
Phone: (510) 843-1872  
Facsimile: (510) 843-3785  
E-Mail: [jgalloway@ucsusa.org](mailto:jgalloway@ucsusa.org)

Dated: December 28, 2006

**CERTIFICATE OF SERVICE**

I, John Galloway, certify that I have, on this date, caused the foregoing NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION OF THE UNION OF CONCERNED SCIENTISTS to be served by electronic mail, or for any party for which an electronic mail address has not been provided, by U.S. Mail on the parties listed on the Service List for the proceeding in California Public Utilities Commission Docket No. R.06-04-009. I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on December 28, 2006, at Berkeley, California.

\_\_\_\_\_  
/s/  
John Galloway

.....

**VERIFICATION**

I, John Galloway, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 2006, at Berkeley, California.

\_\_\_\_\_  
/s/  
John Galloway  
2397 Shattuck Avenue, Suite 203  
Berkeley, CA 94704  
Phone: (510) 843-1872  
Facsimile: (510) 843-3785  
E-Mail: jgalloway@ucsusa.org